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AMENDED IN SENATE JULY 2, 2008

AMENDED IN SENATE JUNE 12, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 2578**

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**Introduced by Assembly Member Lieu**

February 22, 2008

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An act to amend, repeal, and add Sections 688.020 and 688.030 of the Code of Civil Procedure, and to amend Sections 1013, 1701.2, 5135, and 5374 of, and amend, repeal, and add Sections ~~2014~~ 2104, 5317, and 5417 of, the Public Utilities Code, relating to the Public Utilities Commission.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2578, as amended, Lieu. Public Utilities Commission: procedures and remedies.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities and can establish its own procedures, subject to statutory limitations or directions and constitutional requirements of due process. Existing law authorizes the commission to determine whether a proceeding requires a hearing, authorizes the commission to assign one or more commissioners and administrative law judges to oversee cases, and prescribes separate procedures for proceedings that the commission determines are either quasi-legislative,

adjudication, or ratesetting cases. Existing law authorizes the commission to impose various remedies upon finding a violation of the Public Utilities Act or certain other violations, and makes any public utility and any corporation other than a public utility, that violates the act, or that fails to comply with any part of any order, decision, rule, direction, demand, or requirement of the commission guilty of a crime.

This bill would authorize the commission to determine that the respondent lacks, or may lack, the ability to pay potential penalties or fines or to pay restitution that may be ordered by the commission, and if so found, to order the respondent to demonstrate, to the satisfaction of the commission, sufficient ability to pay potential penalties, fines, or restitution. The bill would require the respondent to demonstrate the ability to pay, or make other financial arrangements satisfactory to the commission, within 7 days of the commission commencing an adjudication case. The bill would authorize the commission to delegate to the attorney to the commission the authority to determine whether a sufficient showing has been made by the respondent of an ability to pay and would authorize the respondent to request impartial review by an administrative law judge. The review of the administrative law judge would become part of the record of the adjudication and would be subject to the commission's consideration in its order resolving the adjudication case. Certain public utilities would be presumed to be able to pay potential penalties or fines or to pay restitution that may be ordered by the commission, and, thus, these ability to pay provisions would not apply to those public utilities.

The commission also has regulatory authority over household goods carriers pursuant to the Household Goods Carriers Act and over charter-party carriers of passengers pursuant to the Passenger Charter-Party Carriers Act.

The bill would authorize the commission to enjoin the sale of the assets of a public utility, common carrier, household goods carrier, or charter-party carrier of passengers to satisfy unpaid fines and penalties, would authorize, until January 1, 2014, the commission to bring an action pursuant to the Uniform Fraudulent Transfer Act, and would make the fraudulent transfer of assets to avoid paying a commission-imposed fine or penalty subject to prosecution under certain existing criminal provisions. By expanding the definition of a crime, the bill would impose a state-mandated local program.

The bill, until January 1, 2014, would extend certain existing authorizations for the state or a department or agency of the state to

levy on property by warrant or notice of levy pursuant to any provision of the Public Resources Code, Revenue and Taxation Code, or Unemployment Insurance Code, to any provision of the Public Utilities Code.

The bill would authorize the commission to require, as a precondition to the issuance of certain permits, registrations, or certificates, the procurement of a performance bond sufficient to facilitate the collection of fines, penalties, and restitution related to enforcement actions that can be taken against the applicant.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 688.020 of the Code of Civil Procedure
- 2 is amended to read:
- 3 688.020. (a) Except as otherwise provided by statute, if a
- 4 warrant may properly be issued by the state, or by a department
- 5 or agency of the state, pursuant to any provision of the Public
- 6 Resources Code, Public Utilities Code, Revenue and Taxation
- 7 Code, or Unemployment Insurance Code, and the warrant may be
- 8 levied with the same effect as a levy pursuant to a writ of execution,
- 9 the state or the department or agency of the state authorized to
- 10 issue the warrant may use any of the remedies available to a
- 11 judgment creditor, including, but not limited to, those provided in
- 12 Chapter 6 (commencing with Section 708.010) of Division 2.
- 13 (b) The proper court for the enforcement of those remedies is
- 14 a court of any of the following counties:
- 15 (1) The county where the debtor resides.
- 16 (2) The county where the property against which enforcement
- 17 is sought is located.
- 18 (3) If the debtor does not reside in this state, any county of this
- 19 state.

1 (c) This section shall remain in effect only until January 1, 2014,  
2 and as of that date is repealed, unless a later enacted statute, that  
3 is enacted before January 1, 2014, deletes or extends that date.

4 SEC. 2. Section 688.020 is added to the Code of Civil  
5 Procedure, to read:

6 688.020. (a) Except as otherwise provided by statute, if a  
7 warrant may properly be issued by the state, or by a department  
8 or agency of the state, pursuant to any provision of the Public  
9 Resources Code, Revenue and Taxation Code, or Unemployment  
10 Insurance Code, and the warrant may be levied with the same  
11 effect as a levy pursuant to a writ of execution, the state or the  
12 department or agency of the state authorized to issue the warrant  
13 may use any of the remedies available to a judgment creditor,  
14 including, but not limited to, those provided in Chapter 6  
15 (commencing with Section 708.010) of Division 2.

16 (b) The proper court for the enforcement of those remedies is  
17 a court of any of the following counties:

18 (1) The county where the debtor resides.

19 (2) The county where the property against which enforcement  
20 is sought is located.

21 (3) If the debtor does not reside in this state, any county of this  
22 state.

23 (4) This section shall become operative on January 1, 2014.

24 SEC. 3. Section 688.030 of the Code of Civil Procedure is  
25 amended to read:

26 688.030. (a) If pursuant to any provision of the Public  
27 Resources Code, Public Utilities Code, Revenue and Taxation  
28 Code (excluding Sections 3201 to 3204, inclusive), or  
29 Unemployment Insurance Code, property is levied upon pursuant  
30 to a warrant or notice of levy issued by the state or by a department  
31 or agency of the state for the collection of a liability:

32 (1) If the debtor is a natural person, the debtor is entitled to the  
33 same exemptions to which a judgment debtor is entitled. Except  
34 as provided in subdivisions (b) and (c), the claim of exemption  
35 shall be made, heard, and determined as provided in Chapter 4  
36 (commencing with Section 703.010) of Division 2 in the same  
37 manner as if the property were levied upon under a writ of  
38 execution.

39 (2) A third person may claim ownership or the right to  
40 possession of the property or a security interest in or lien on the

1 property. Except as provided in subdivisions (b) and (c) or as  
2 otherwise provided by statute, the third-party claim shall be made,  
3 heard, and determined as provided in Division 4 (commencing  
4 with Section 720.010) in the same manner as if the property were  
5 levied upon under a writ of execution.

6 (b) In the case of a levy pursuant to a notice of levy:

7 (1) The claim of exemption or the third-party claim shall be  
8 filed with the state department or agency that issued the notice of  
9 levy.

10 (2) The state department or agency that issued the notice of levy  
11 shall perform the duties of the levying officer, except that the state  
12 department or agency need not give itself the notices that the  
13 levying officer is required to serve on a judgment creditor or  
14 creditor or the notices that a judgment creditor or creditor is  
15 required to give to the levying officer. The state department or  
16 agency in performing the duties of the levying officer under this  
17 paragraph has no obligation to search public records or otherwise  
18 seek to determine whether any lien or encumbrance exists on  
19 property sold or collected.

20 (c) A claim of exemption or a third-party claim pursuant to this  
21 section shall be heard and determined in the superior court in the  
22 county where the property levied upon is located.

23 (d) This section shall remain in effect only until January 1, 2014,  
24 and as of that date is repealed, unless a later enacted statute, that  
25 is enacted before January 1, 2014, deletes or extends that date.

26 SEC. 4. Section 688.030 is added to the Code of Civil  
27 Procedure, to read:

28 688.030. (a) If pursuant to any provision of the Public  
29 Resources Code, Revenue and Taxation Code (excluding Sections  
30 3201 to 3204, inclusive), or Unemployment Insurance Code,  
31 property is levied upon pursuant to a warrant or notice of levy  
32 issued by the state or by a department or agency of the state for  
33 the collection of a liability:

34 (1) If the debtor is a natural person, the debtor is entitled to the  
35 same exemptions to which a judgment debtor is entitled. Except  
36 as provided in subdivisions (b) and (c), the claim of exemption  
37 shall be made, heard, and determined as provided in Chapter 4  
38 (commencing with Section 703.010) of Division 2 in the same  
39 manner as if the property were levied upon under a writ of  
40 execution.

(2) A third person may claim ownership or the right to possession of the property or a security interest in or lien on the property. Except as provided in subdivisions (b) and (c) or as otherwise provided by statute, the third-party claim shall be made, heard, and determined as provided in Division 4 (commencing with Section 720.010) in the same manner as if the property were levied upon under a writ of execution.

(b) In the case of a levy pursuant to a notice of levy:

(1) The claim of exemption or the third-party claim shall be filed with the state department or agency that issued the notice of levy.

(2) The state department or agency that issued the notice of levy shall perform the duties of the levying officer, except that the state department or agency need not give itself the notices that the levying officer is required to serve on a judgment creditor or creditor or the notices that a judgment creditor or creditor is required to give to the levying officer. The state department or agency in performing the duties of the levying officer under this paragraph has no obligation to search public records or otherwise seek to determine whether any lien or encumbrance exists on property sold or collected.

(c) A claim of exemption or a third-party claim pursuant to this section shall be heard and determined in the superior court in the county where the property levied upon is located.

(d) This section shall become operative on January 1, 2014.

SEC. 5. Section 1013 of the Public Utilities Code is amended to read:

1013. (a) The commission may by rule or order, partially or completely exempt certain telecommunications services offered by telephone and telegraph corporations from the certification requirements of Section 1001 and instead subject them to registration as the commission may determine. Telephone corporations that the commission determines have monopoly power or market power in a relevant market or markets shall have a certificate of public convenience and necessity and shall not be eligible for designation as registered telephone corporations. A telephone corporation that has been found not to have monopoly power or market power in a relevant market or markets by the commission shall be eligible for registration subject to the approval of the commission. A telephone corporation operating in this state

1 shall either have a certificate of public convenience and necessity  
2 or be registered under this section or be a telephone corporation  
3 authorized to operate in California without a certificate of public  
4 convenience and necessity.

5 (b) Registered telephone corporations qualifying under this  
6 section shall maintain an active registration with the commission  
7 at all times and comply with commission rules and regulations  
8 established for registered telephone corporations qualifying under  
9 this section.

10 (c) The registration of registered telephone corporations  
11 qualifying under this section shall be on a form prescribed by the  
12 commission and shall contain any information the commission  
13 may by rule or order require, but shall include as a minimum the  
14 name and address of the telephone corporation's registered agent,  
15 if any, the name, address, and title of each officer or director, and  
16 a description of the telecommunications services it offers or intends  
17 to offer.

18 (d) Prior to designating any telephone corporation for  
19 registration status, the commission shall adopt rules to do both of  
20 the following:

21 (1) Verify the financial viability of the corporation.

22 (2) Verify that the officers of the corporation have no prior  
23 history of committing fraud on the public.

24 (e) The commission shall require as a precondition to registration  
25 the procurement of a performance bond sufficient to cover taxes  
26 or fees, or both, collected from customers and held for remittance  
27 and advances or deposits the telecommunications company may  
28 collect from its customers, or order that those advances or deposits  
29 be held in escrow or trust.

30 (f) The commission may require, as a precondition to  
31 registration, the procurement of a performance bond sufficient to  
32 facilitate the collection of fines, penalties, and restitution related  
33 to enforcement actions that can be taken against a  
34 telecommunications company.

35 (g) The commission may, with or without a hearing, grant a  
36 telephone corporation registration status and an exemption from  
37 the certification requirements of Section 1001. However, upon  
38 timely application, any person entitled to be heard may file a protest  
39 on whether a telephone corporation should be eligible for  
40 registration status and the granting of an exemption from the

1 certification requirement of Section 1001. Upon a determination  
2 that the protest has presented a prima facie case that a telephone  
3 corporation should not be granted registration status and an  
4 exemption from Section 1001, a hearing shall be held.

5 (h) The commission, after notice and a hearing if requested,  
6 may cancel, revoke, or suspend the registration of any telephone  
7 corporation upon any of the following grounds:

8 (1) The corporation does not provide the information required  
9 by this article.

10 (2) The corporation fails to provide or maintain a performance  
11 bond.

12 (3) The corporation conducts any illegal telephone operations.

13 (4) The corporation violates any of the applicable provisions of  
14 this code or of any regulations issued thereunder.

15 (5) The corporation violates any order, decision, rule, regulation,  
16 direction, demand, or requirement established by the commission  
17 under this code.

18 (6) The corporation fails to pay any fee or fine imposed upon  
19 the utility under this code.

20 (7) The corporation files a false statement to the commission.

21 (8) The corporation knowingly defrauds a customer.

22 (i) As an alternative to the cancellation, revocation, or  
23 suspension of a registration, the commission, after notice and a  
24 hearing, may impose upon the holder of the registration a fine in  
25 an amount not to exceed twenty thousand dollars (\$20,000) for  
26 each offense, and order reparations and restitution to customers  
27 for each offense.

28 (j) Every violation of this section or any part of any order,  
29 decision, decree, rule, direction, demand, or requirement of the  
30 commission, by any telephone corporation or person is a separate  
31 and distinct offense, and in case of a continuing violation each  
32 day's continuance thereof shall be a separate and distinct offense.

33 (k) In construing and enforcing this section relating to penalties,  
34 the act, omission, or failure of any officer, agent, or employee of  
35 any registered telephone corporation qualifying under this section  
36 acting within the scope of his or her official duties or employment,  
37 shall in every case be the act, omission, or failure of the  
38 corporation. The commission may assess interest to commence  
39 upon the day the payment is delinquent. All fines, assessments,



1 and interest collected shall be deposited at least once each month  
2 in the General Fund.

3 (l) Actions to enforce the decision of the commission ordering  
4 the payment of fines, reparations, or restitution under this section  
5 shall be brought in the name of the people of the State of California,  
6 in the superior court of the county, or city and county, in which  
7 the corporation complained of, if any, has its principal place of  
8 business, or in which the person, if any, complained of, resides or  
9 in which the commission has offices. The enforcement of a  
10 commission decision or order under this section shall be  
11 commenced and prosecuted to final judgment by the attorney of  
12 the commission.

13 (m) The provisions of this section do not apply to commercial  
14 mobile radio service.

15 SEC. 6. Section 1701.2 of the Public Utilities Code is amended  
16 to read:

17 1701.2. (a) If the commission pursuant to Section 1701.1 has  
18 determined that an adjudication case requires a hearing, the  
19 procedures prescribed by this section shall be applicable. The  
20 assigned commissioner or the assigned administrative law judge  
21 shall hear the case in the manner described in the scoping memo.  
22 The scoping memo shall designate whether the assigned  
23 commissioner or the assigned administrative law judge shall preside  
24 in the case. The commission shall provide by regulation for  
25 peremptory challenges and challenges for cause of the  
26 administrative law judge. Challenges for cause shall include, but  
27 not be limited to, financial interests and prejudice. The regulation  
28 shall provide that all parties are entitled to one peremptory  
29 challenge of the assignment of the administrative law judge in all  
30 cases. All parties are entitled to unlimited peremptory challenges  
31 in any case in which the administrative law judge has within the  
32 previous 12 months served in any capacity in an advocacy position  
33 at the commission, been employed by a regulated public utility,  
34 or has represented a party or has been a party of interest in the  
35 case. The assigned commissioner or the administrative law judge  
36 shall prepare and file a decision setting forth recommendations,  
37 findings, and conclusions. The decision shall be filed with the  
38 commission and served upon all parties to the action or proceeding  
39 without undue delay, not later than 60 days after the matter has  
40 been submitted for decision. The decision of the assigned

1 commissioner or the administrative law judge shall become the  
2 decision of the commission if no further action is taken within 30  
3 days. Any interested party may appeal the decision to the  
4 commission, provided that the appeal is made within 30 days of  
5 the issuance of the decision. The commission may itself initiate a  
6 review of the proposed decision on any grounds. The commission  
7 decision shall be based on the record developed by the assigned  
8 commissioner or the administrative law judge. A decision different  
9 from that of the assigned commissioner or the administrative law  
10 judge shall be accompanied by a written explanation of each of  
11 the changes made to the decision.

12 (b) Ex parte communications shall be prohibited in adjudication  
13 cases.

14 (c) Notwithstanding any other provision of law, the commission  
15 may meet in a closed hearing to consider the decision that is being  
16 appealed. The vote on the appeal shall be in a public meeting and  
17 shall be accompanied with an explanation of the appeal decision.

18 (d) Adjudication cases shall be resolved within 12 months of  
19 initiation unless the commission makes findings why that deadline  
20 cannot be met and issues an order extending that deadline. In the  
21 event that a rehearing of an adjudication case is granted the parties  
22 shall have an opportunity for final oral argument.

23 (e) (1) The commission may determine that the respondent  
24 lacks, or may lack, the ability to pay potential penalties or fines  
25 or to pay restitution that may be ordered by the commission.

26 (2) If the commission determines that a respondent lacks, or  
27 may lack, the ability to pay, the commission may order the  
28 respondent to demonstrate, to the satisfaction of the commission,  
29 sufficient ability to pay potential penalties, fines, or restitution that  
30 may be ordered by the commission. The respondent shall  
31 demonstrate the ability to pay, or make other financial  
32 arrangements satisfactory to the commission, within seven days  
33 of the commission commencing an adjudication case. The  
34 commission may delegate to the attorney to the commission the  
35 determination of whether a sufficient showing has been made by  
36 the respondent of an ability to pay.

37 (3) Within seven days of the commission's determination of the  
38 respondent's ability to pay potential penalties, fines, or restitution,  
39 the respondent shall be entitled to an impartial review by an  
40 administrative law judge, of the sufficiency of the showing made

1 by the respondent of the respondent's ability to pay. The review  
2 by *an* administrative law judge of the ability of the respondent to  
3 pay shall become part of the record of the adjudication and is  
4 subject to the commission's consideration in its order resolving  
5 the adjudication case. The administrative law judge may enter  
6 temporary orders modifying any financial requirement made of  
7 the respondent pending the review by the administrative law judge.

8 (4) A respondent that is a public utility regulated under a  
9 rate-of-return or rate-of-margin regulatory structure or that has  
10 gross annual revenues of more than one hundred million dollars  
11 (\$100,000,000) generated within California is presumed to be able  
12 to pay potential penalties or fines or to pay restitution that may be  
13 ordered by the commission, and, therefore, paragraphs (1) to (3),  
14 inclusive, do not apply to that respondent.

15 SEC. 7. Section 2104 of the Public Utilities Code is amended  
16 to read:

17 2104. (a) Except as provided by Sections 2100 and 2107.5,  
18 and in addition to the remedies provided in Sections 688.020 and  
19 688.030 of the Code of Civil Procedure, actions to recover penalties  
20 under this part may be brought in the name of the people of the  
21 State of California, in the superior court in and for the county, or  
22 city and county, in which the cause or some part thereof arose, or  
23 in which the corporation complained of has its principal place of  
24 business, or in which the person complained of resides. The action,  
25 if brought pursuant to this section, shall be commenced and  
26 prosecuted to final judgment by the attorney or agent of the  
27 commission. All fines and penalties may be sued for and recovered.  
28 The commission may enjoin the sale of a public utility's or  
29 common carrier's assets to satisfy unpaid fines and penalties. The  
30 commission may use any of the remedies afforded to a creditor  
31 under the Uniform Fraudulent Transfer Act (Chapter 1  
32 (commencing with Section 3439) of Title 2 of Part 2 of Division  
33 4 of the Civil Code). Respondents who fraudulently transfer assets  
34 to avoid paying commission-imposed fines or penalties are subject  
35 to prosecution under Sections 154, 531, and 531a of the Penal  
36 Code. In all of these actions, the procedure and rules of evidence  
37 shall be the same as in ordinary civil actions, except for  
38 prosecutions under the Penal Code or as otherwise herein provided.  
39 All fines and penalties recovered by the state in any action, together  
40 with the costs thereof, shall be paid into the State Treasury to the

1 credit of the General Fund. Any action may be compromised or  
2 discontinued on application of the commission upon the terms the  
3 court approves and orders.

4 (b) This section shall remain in effect only until January 1, 2014,  
5 and as of that date is repealed, unless a later enacted statute, that  
6 is enacted before January 1, 2014, deletes or extends that date.

7 SEC. 8. Section 2104 is added to the Public Utilities Code, to  
8 read:

9 2104. (a) Except as provided by Sections 2100 and 2107.5,  
10 actions to recover penalties under this part shall be brought in the  
11 name of the people of the State of California, in the superior court  
12 in and for the county, or city and county, in which the cause or  
13 some part thereof arose, or in which the corporation complained  
14 of has its principal place of business, or in which the person  
15 complained of resides. The action shall be commenced and  
16 prosecuted to final judgment by the attorney or agent of the  
17 commission. All fines and penalties may be sued for and recovered.  
18 The commission may enjoin the sale of a public utility's or  
19 common carrier's assets to satisfy unpaid fines and penalties. The  
20 commission may use any of the remedies afforded to a creditor  
21 under the Uniform Fraudulent Transfer Act (Chapter 1  
22 (commencing with Section 3439) of Title 2 of Part 2 of Division  
23 4 of the Civil Code). Respondents who fraudulently transfer assets  
24 to avoid paying commission-imposed fines or penalties are subject  
25 to prosecution under Sections 154, 531, and 531a of the Penal  
26 Code. In all of these actions, the procedure and rules of evidence  
27 shall be the same as in ordinary civil actions, except for  
28 prosecutions under the Penal Code or as otherwise herein provided.  
29 All fines and penalties recovered by the state in any action, together  
30 with the costs thereof, shall be paid into the State Treasury to the  
31 credit of the General Fund. Any action may be compromised or  
32 discontinued on application of the commission upon the terms the  
33 court approves and orders.

34 (b) This section shall become operative on January 1, 2014.

35 SEC. 9. Section 5135 of the Public Utilities Code is amended  
36 to read:

37 5135. (a) Before a permit is hereafter issued the commission  
38 shall require the applicant to establish ability and reasonable  
39 financial responsibility to initiate the proposed operations. The  
40 commission shall require the applicant to establish his or her

1 knowledge and ability to engage in business as a household goods  
2 carrier by examination. The examination may be written or oral,  
3 or in the form of a demonstration of skill or any combination of  
4 these, and any investigation of character, experience, and any tests  
5 of technical knowledge and manual skill that the commission  
6 determines to be appropriate may be employed. In any examination  
7 the qualification of the applicant shall be determined by an  
8 appraisal made by a member of the commission's staff. An  
9 applicant who has been determined to be unqualified may thereafter  
10 establish his or her qualifications through a subsequent  
11 examination, but no subsequent examination shall be taken prior  
12 to 30 days from the date when the applicant was found to be  
13 unqualified. If the staff member determines that the applicant is  
14 not qualified, then the matter shall be set for hearing and the  
15 qualification of the applicant shall be determined by the  
16 commission on the basis of evidence of qualifications presented  
17 at the hearing, which evidence may include consideration of any  
18 written examination of the applicant. If the staff member  
19 determines that the applicant is qualified, the commission may  
20 issue a permit without hearing, unless the commission determines  
21 that a hearing is desirable, in which event the commission may set  
22 the application for hearing.

23 (b) An applicant may qualify in one of the following ways:

24 (1) If an individual, he or she may qualify by personal  
25 examination or by examination of his *or her* responsible managing  
26 employee.

27 (2) If a copartnership or corporation, or any other type of  
28 business organization, it may qualify by examination of the  
29 responsible managing officer, employee who works at least 32  
30 hours per week, or partner of the applicant firm.

31 (c) If the individual qualified by examination ceases to be  
32 connected with the permitholder, the permitholder shall notify the  
33 commission in writing within 30 days after the cessation. If notice  
34 is given the permit shall remain in force a reasonable length of  
35 time in order that another representative of applicant may be  
36 qualified before the commission. If the permitholder fails to notify  
37 the commission of the cessation within a 30-day period, at the end  
38 of that period the permit shall be automatically suspended.

39 (d) The commission shall require each applicant for a permit to  
40 submit fingerprints for each owner, partner, officer, and director

1 as a prerequisite to the issuance of a permit to operate as a  
2 household goods carrier. The commission shall submit completed  
3 fingerprint cards to the Department of Justice. Those fingerprints  
4 shall be available for use by the Department of Justice and the  
5 Department of Justice may transmit the fingerprints to the Federal  
6 Bureau of Investigation for a national criminal history record check.  
7 The commission may use any information obtained from the  
8 national criminal history record check conducted pursuant to this  
9 section to determine the applicant's qualification for permit.

10 (e) The commission may require, as a precondition to the  
11 issuance of a permit, the procurement of a performance bond  
12 sufficient to facilitate the collection of fines, penalties, and  
13 restitution related to enforcement actions that can be taken against  
14 the applicant.

15 (f) The commission may refuse to issue a permit if it is shown  
16 that an applicant or an officer, director, partner, or associate thereof  
17 has committed any act constituting dishonesty or fraud; committed  
18 any act which, committed by a permitholder would be grounds for  
19 a suspension or revocation of the permit; misrepresented any  
20 material fact on the application; or, committed a felony, or crime  
21 involving moral turpitude.

22 (g) The commission shall issue a permit only to those applicants  
23 who it finds have demonstrated that they possess sufficient  
24 knowledge, ability, integrity, and financial resources and  
25 responsibility to perform the service within the scope of their  
26 application.

27 (h) A permit may not be issued unless it has been shown that  
28 applicant meets one of the following residence requirements: If  
29 an individual, applicant shall have resided in the State of California  
30 for not less than 90 days next preceding the filing of the  
31 application. If a partnership, the partner having the largest  
32 percentage interest in the partnership shall have resided in the State  
33 of California continuously for not less than 90 days next preceding  
34 the filing of the application. If a corporation, applicant shall be a  
35 domestic corporation or shall have qualified to transact business  
36 in the State of California as a foreign corporation at the time of  
37 filing the application.

38 (i) The commission shall prescribe, amend, and repeal rules in  
39 accordance with law for the administration of this section.

1 SEC. 10. Section 5317 of the Public Utilities Code is amended  
2 to read:

3 5317. (a) In addition to the remedies provided in Sections  
4 688.020 and 688.030 of the Code of Civil Procedure, actions to  
5 recover penalties under this chapter may be brought in the name  
6 of the people of the State of California, in the superior court of the  
7 county, or city and county, in which the cause or some part thereof  
8 arose, or in which the corporation complained of, if any, has its  
9 principal place of business, or in which the person, if any,  
10 complained of, resides. The action, if brought pursuant to this  
11 section, shall be commenced and prosecuted to final judgment by  
12 the attorney of the commission. The commission may enjoin the  
13 sale of the assets of a household goods carrier to satisfy unpaid  
14 fines and penalties. The commission may use any of the remedies  
15 afforded to a creditor under the Uniform Fraudulent Transfer Act  
16 (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2  
17 of Division 4 of the Civil Code). Respondents who fraudulently  
18 transfer assets to avoid paying commission-imposed fines or  
19 penalties are subject to prosecution pursuant to Sections 154, 531,  
20 and 531a of the Penal Code.

21 (b) This section shall remain in effect only until January 1, 2014,  
22 and as of that date is repealed, unless a later enacted statute, that  
23 is enacted before January 1, 2014, deletes or extends that date.

24 SEC. 11. Section 5317 is added to the Public Utilities Code,  
25 to read:

26 5317. (a) Actions to recover penalties under this chapter shall  
27 be brought in the name of the people of the State of California, in  
28 the superior court of the county, or city and county, in which the  
29 cause or some part thereof arose, or in which the corporation  
30 complained of, if any, has its principal place of business, or in  
31 which the person, if any, complained of, resides. The action shall  
32 be commenced and prosecuted to final judgment by the attorney  
33 of the commission.

34 (b) This section shall become operative on January 1, 2014.

35 SEC. 12. Section 5374 of the Public Utilities Code is amended  
36 to read:

37 5374. (a) (1) Before a permit or certificate is issued or  
38 renewed, the commission shall require the applicant to establish  
39 reasonable fitness and financial responsibility to initiate and  
40 conduct or continue to conduct the proposed or existing

1 transportation services. The commission shall not issue or renew  
2 a permit or certificate pursuant to this chapter unless the applicant  
3 meets all of the following requirements:

4 (A) It is financially and organizationally capable of conducting  
5 an operation that complies with the rules and regulations of the  
6 Department of the California Highway Patrol governing highway  
7 safety.

8 (B) It is committed to observing the hours of service regulations  
9 of state and, where applicable, federal law, for all persons, whether  
10 employees or subcarriers, operating vehicles in transportation for  
11 compensation under the certificate.

12 (C) It has a preventive maintenance program in effect for its  
13 vehicles used in transportation for compensation that conforms to  
14 regulations of the Department of the California Highway Patrol  
15 in Title 13 of the California Code of Regulations.

16 (D) It participates in a program to regularly check the driving  
17 records of all persons, whether employees or subcarriers, operating  
18 vehicles used in transportation for compensation.

19 (E) It has a safety education and training program in effect for  
20 all employees or subcarriers operating vehicles used in  
21 transportation for compensation.

22 (F) It will maintain its vehicles used in transportation for  
23 compensation in a safe operating condition and in compliance with  
24 the Vehicle Code and with regulations contained in Title 13 of the  
25 California Code of Regulations relative to motor vehicle safety.

26 (G) It has filed with the commission the certificate of workers'  
27 compensation insurance coverage or statement required by Section  
28 5378.1.

29 (H) It has provided the commission an address of an office or  
30 terminal where documents supporting the factual matters specified  
31 in the showing required by this subdivision may be inspected by  
32 the commission and the Department of the California Highway  
33 Patrol.

34 (I) It provides for a mandatory controlled substance and alcohol  
35 testing certification program as adopted by the commission  
36 pursuant to Section 1032.1.

37 (2) With respect to subparagraphs (B) and (F) of paragraph (1),  
38 the commission may base a finding on a certification by the  
39 commission that an applicant has filed, with the commission, a  
40 sworn declaration of ability to comply and intent to comply.



1 (3) The commission may require, as a precondition to the  
2 issuance of a permit or certificate, the procurement of a  
3 performance bond sufficient to facilitate the collection of fines,  
4 penalties, and restitution related to enforcement actions that can  
5 be taken against the applicant.

6 (b) In addition to the requirements in subdivision (a),  
7 charter-party carriers shall meet all other state and, where  
8 applicable, federal regulations as prescribed.

9 (c) The commission may delegate to its executive director or  
10 that executive director's designee the authority to issue, renew, or  
11 authorize the transfer of, charter-party carrier permits or certificates  
12 and to make the findings specified in subdivision (a) that are  
13 necessary to that delegated authority.

14 SEC. 13. Section 5417 of the Public Utilities Code is amended  
15 to read:

16 5417. (a) In addition to the remedies provided in Sections  
17 688.020 and 688.030 of the Code of Civil Procedure, actions to  
18 recover penalties under this chapter may be brought in the name  
19 of the people of the State of California, in the superior court of the  
20 county, or city and county, in which the cause or some part thereof  
21 arose, or in which the corporation complained of, if any, has its  
22 principal place of business, or in which the person, if any,  
23 complained of, resides. The action, if brought pursuant to this  
24 section, shall be commenced and prosecuted to final judgment by  
25 the attorney of the commission. The commission may enjoin the  
26 sale of the assets of a charter-party carrier of passengers to satisfy  
27 unpaid fines and penalties. The commission may use any of the  
28 remedies afforded to a creditor under the Uniform Fraudulent  
29 Transfer Act (Chapter 1 (commencing with Section 3439) of Title  
30 2 of Part 2 of Division 4 of the Civil Code). Respondents who  
31 fraudulently transfer assets to avoid paying commission-imposed  
32 fines or penalties are subject to prosecution pursuant to Sections  
33 154, 531, and 531a of the Penal Code.

34 (b) This section shall remain in effect only until January 1, 2014,  
35 and as of that date is repealed, unless a later enacted statute, that  
36 is enacted before January 1, 2014, deletes or extends that date.

37 SEC. 14. Section 5417 is added to the Public Utilities Code,  
38 to read:

39 5417. (a) Actions to recover penalties under this chapter shall  
40 be brought in the name of the people of the State of California, in

1 the superior court of the county, or city and county, in which the  
2 cause or some part thereof arose, or in which the corporation  
3 complained of, if any, has its principal place of business, or in  
4 which the person, if any, complained of, resides. The action shall  
5 be commenced and prosecuted to final judgment by the attorney  
6 of the commission.

7 (b) This section shall become operative on January 1, 2014.

8 SEC. 15. On or before January 1, 2013, the Public Utilities  
9 Commission shall submit to the Senate Committee on Judiciary  
10 and the Assembly Committee on Judiciary a report on the changes  
11 made by this act to Sections 688.020 and 688.030 of the Code of  
12 Civil Procedure and to Section 2104 of the Public Utilities Code,  
13 as they pertain to the status of the commission as a judgment  
14 creditor. The report shall include both of the following:

15 (a) The number of judgment debtors the commission was able  
16 to collect from as a judgment creditor, the dollar amount of those  
17 judgments, and the total dollar amount collected.

18 (b) The effectiveness of the changes made by this act that grant  
19 the commission status as a judgment creditor.

20 SEC. 16. No reimbursement is required by this act pursuant to  
21 Section 6 of Article XIII B of the California Constitution because  
22 the only costs that may be incurred by a local agency or school  
23 district will be incurred because this act creates a new crime or  
24 infraction, eliminates a crime or infraction, or changes the penalty  
25 for a crime or infraction, within the meaning of Section 17556 of  
26 the Government Code, or changes the definition of a crime within  
27 the meaning of Section 6 of Article XIII B of the California  
28 Constitution.